



**APPROVED MINUTES
CITY OF SCOTTSDALE
CHARTER REVIEW TASK FORCE**

MONDAY, JANUARY 11, 2010

**CITY HALL KIVA
3939 N. DRINKWATER BOULEVARD
SCOTTSDALE, ARIZONA 85351**

PRESENT: Steven J. Twist, Chair
Susan Bitter Smith
Jim Derouin
Cindi Eberhardt
Alan Kaufman
Charlie Smith
Lisa Johnson Stone

STAFF: Carolyn Jagger, City Clerk
Sherry Scott, Deputy City Attorney
Brent Stockwell, Senior Advisor

Call to Order/Roll Call

Chair Twist called the Charter Review Task Force regular meeting to order at 5:02 p.m. Roll call confirmed the presence of Task Force members as noted.

1. Approval of Minutes from the December 14, 2009 Meeting

MOTION AND VOTE

CINDI EBERHARDT MOVED APPROVAL OF THE DECEMBER 14, 2009 CHARTER REVIEW TASK FORCE MINUTES. ALAN KAUFMAN SECONDED THE MOTION, WHICH PASSED UNANIMOUSLY BY A VOTE OF SEVEN (7) TO ZERO (0).

2. Public Comment

Ray Torres discussed the language proposed by the ORANGE Coalition concerning Article 12, Section 2, dealing with the establishment of municipally owned and operated utilities. The ORANGE Coalition has been consistently focused on the protection of private property rights and the misuse of eminent domain. The Coalition has publicly expressed its opposition to the

use of eminent domain to condemn Arizona American Water; however, that issue is separate from its efforts to reform the Scottsdale City Charter.

Steve Hirsch spoke in favor of the ORANGE Coalition's proposed amendments to Article 12, Section 2, indicating the City should not be in the position of putting a utility company out of business without the state agency that is overseeing the operations of that utility making a determination or finding that service is not being rendered adequately.

Susan Bitter Smith asked Mr. Hirsch to address Deputy City Attorney Sherry Scott's concerns regarding the proposed language, and he indicated the language does narrow the present ability of the City to exercise the power of condemnation to acquire a utility. While there is no Arizona statute that would require the Arizona Corporation Commission to have a full hearing or issue a finding at the City's request, there are procedures for filing a complaint and having a certificate deleted.

Chair Twist asked Mr. Hirsch to clarify the last line of the proposal that reads, "unable or unwilling to provide adequate service." Mr. Hirsch indicated that language is taken from the case law interpreting the deletion statute. The burden is on the complainant and is a preponderance burden. Mr. Hirsch discussed the complaint and hearing process with the Task Force.

3. Discussion and possible action regarding recommendations to the City Council to add a provision to the City Charter relating to, or further regulating, certain public expenditures or subsidies to private entities.

Deputy City Attorney Sherry Scott discussed the Arizona Gift Clause, which currently prohibits donations, grants or subsidies from municipalities to private industry. She asked for clarification from the Task Force regarding what elements it feels should be addressed with this amendment, as well as whether it should include a definition of a legal subsidy.

Barry Broome, President and CEO of the Greater Phoenix Economic Council, discussed economic development and stated that communities should not subsidize economic development under any circumstance. He expressed concern regarding governance by ballot, indicating that it can create unintended consequences, drive spending, and limit controls. Keeping governance in the hands of the City is important. A policy showing return-driven exercises for economic development matters would be important. The City's economic development strategy should be careful, smart, disciplined, rigid, and seldom used. The goal should be benefits to taxpayers and residents, making sure that the dollars are spent for a public purpose.

David Roderique, Executive Director of the Downtown Phoenix Partnership and former City of Scottsdale Economic Vitality General Manager, discussed how incentives were used in the past and how they were perceived in the community. Historically, Scottsdale has been very judicious in the use of incentives, and less than one percent of commercial projects ever received any form of assistance from the City. Due to the gift clause, incentives were structured as payments for public infrastructure. These decisions should be done on a policy basis, rather than requiring a ballot initiative. Scottsdale has greatly benefited from the use of economic incentives, and eliminating the possibility would put the City at a significant competitive disadvantage.

Kevin McCarthy, executive director, Arizona Tax Resource Association, stated he strongly believes a community's tax system has a significant influence on business decisions to locate there. He encouraged the Task Force not to rely on the gift clause, and to regulate this issue within the Charter. He suggested the proposed language be narrowed to include items that the Task Force thinks are important. This is a serious policy issue that should be approached with caution.

Jim Derouin discussed the issues of incentives, subsidies, and economic development within the City and state. The draft proposal does not include a situation where the City receives a benefit, service, or infrastructure of comparable or proportionate value to the economic benefit that the applicant is receiving. The purpose of this discussion is the issue of providing the people an opportunity to vote on when their money is given away.

Alan Kaufman agreed the voters should be given the opportunity to vote on projects where subsidies and incentives are involved. The proposed language reverses the current presumption, clarifying that if something is not specifically allowed it is prohibited or subject to a vote.

The Task Force discussed the proposed language and possible revisions.

Chair Twist asked that Jim Derouin and Alan Kaufman collaborate with Sherry Scott to address the questions raised in the discussion and revise the proposed language accordingly. The changes will be brought back to the Task Force at the next meeting. There has been agreement that a consensus should be reached on this issue.

Cindi Eberhardt asked staff to prepare an analysis of past incentive projects and how they would have been affected by the revised proposed language, if it had been in place at the time.

Sherry Scott asked that any Task Force members who have recommendations regarding the language revisions send them to staff.

Charlie Smith asked that staff prepare a representative sample list of non-profit organizations that the City has agreements with that could be used to further refine the proposed amendment.

4. Discussion and possible action regarding recommendations to the City Council revising Article 12, Section 2 relating to the establishment of municipally owned and operated utilities (proposed by the ORANGE Coalition).

Sherry Scott explained that the language is a change from the current law, and would require the City to get a final order from the Arizona Corporation Commission before undertaking any due diligence or consideration to potentially acquire a private utility. This would be limited to eminent domain situations. She questioned whether this would be feasible for the City to do before it takes any action, if there is a process that would allow the City the right to obtain that order from the ACC. She stated her understanding is that the Corporation Commission would not have to have a hearing or make that type of a finding if a complaint was lodged. Because the Corporation Commission is there to ensure that citizens receive adequate services at fair rates, it would be odd for them to issue a finding that citizens are receiving inadequate services without addressing that finding with some type of order in an attempt to correct the situation. There are legal issues regarding whether the City can demand that kind of a determination from the ACC. This could be very frustrating for the citizens, and could put the City in the position of

putting on evidence at a hearing before it is able to make a decision about whether or not it wanted to condemn the utility.

State statutes currently provide that the City cannot begin to compete with a private utility without condemnation, and the proposed language would not allow the City to condemn a private utility that also served outside of the City. This would have an impact on the City's ability to condemn a private utility. She expressed concern about how these proposals would interact with current law.

Mr. Hirsch explained that the language clearly states that the City is free to provide service to neighboring territories if they are not served by an existing private utility. That is a narrowing of the City's ability to serve. Before condemnation can begin, there must be a finding by the state agency of an unwillingness or inability to serve. The issue of what happens in the interim is a Corporation Commission issue, which can be resolved by utilizing a third-party operator or the City under an agreement.

The Task Force discussed the process of eminent domain and how this amendment could affect it.

Sherry Smith clarified that there might be times when the City wants to condemn private utilities for reasons other than inadequate service. In addition, she asked that the Task Force include language addressing voluntary acquisitions of private utilities that also serve customers outside of the City.

Marshall Brown, Water Resources, explained that Scottsdale has acquired approximately 29 private service areas, and inadequate service was not a main contributing factor to any of those acquisitions. The driving factor in all of those circumstances had to do with sustainable water supplies for the future, not necessarily adequate or inadequate service being provided at the time of acquisition. He expressed concern that the proposed language narrowly focuses on adequate or inadequate service at the time of consideration.

Susan Bitter Smith clarified that the proposed amendment would affect all utilities, not just water companies.

Mr. Hirsch discussed staff concerns, stating the ORANGE Coalition feels the proposed amendment would address the issue of the improper use of eminent domain.

MOTION

SUSAN BITTER SMITH MADE A MOTION TO RECOMMENDED TO CITY COUNCIL THE CHANGES TO ARTICLE 12, SECTION 2 REGARDING THE ESTABLISHMENT OF MUNICIPALLY OWNED AND OPERATED UTILITIES AS PROPOSED. ALAN KAUFMAN SECONDED THE MOTION.

The Task Force members discussed their views on the motion.

VOTE

THE VOTE ON THE MOTION TO RECOMMEND TO CITY COUNCIL THE CHANGES TO ARTICLE 12, SECTION 2 REGARDING THE ESTABLISHMENT OF

MUNICIPALLY OWNED AND OPERATED UTILITIES AS PROPOSED CARRIED BY A VOTE OF SIX (6) TO ONE (1), WITH CHARLIE SMITH DISSENTING.

“Sec. 2. Establishment of municipally owned and operated utilities.

The city shall have the power to own and operate any public utility, to construct and install all facilities that are reasonably needed, and to lease or purchase any existing utility properties used or useful to public service. The city may also furnish service to adjacent and nearby territories which ARE NOT SERVED BY A PRIVATELY OWNED UTILITY AND WHICH may be conveniently and economically served by the municipally owned and operated utility, subject to the limitations of the provisions of the general laws of this state. The council may provide by ordinance for the establishment of such utility and provide for its regulation and control and the fixing of rates to be charged. The council may by ordinance provide for the extension, enlargement or improvement of AN existing utility, and provide reasonable reserves for such purpose. BEFORE PASSING AN ORDINANCE OR TAKING ANY OTHER ACTION TO ACQUIRE PRIVATE UTILITY PROPERTY THROUGH EMINENT DOMAIN, THE CITY MUST OBTAIN A FINAL ORDER FROM THE ARIZONA CORPORATION COMMISSION FINDING AND DETERMINING THAT THE PRIVATE UTILITY IS UNABLE OR UNWILLING TO PROVIDE ADEQUATE SERVICE.”

- 5. Discussion and possible action regarding recommendations to the City Council revising Article 8, Section 2 relating to contracts for city improvements.**

ITEM 5 WAS CONTINUED TO THE JANUARY 25, 2010 MEETING.

- 6. Discussion and possible action regarding recommendations to the City Council revising Article 7, Section 1 relating to acts requiring an ordinance.**

ITEM 6 WAS CONTINUED TO THE JANUARY 25, 2010 MEETING.

- 7. Discussion and possible action regarding recommendations to the City Council revising Article 1. Section 3(b) relating to flood control and drainage.**

ITEM 7 WAS CONTINUED TO THE JANUARY 25, 2010 MEETING.

- 8. Discussion and possible action regarding recommendations to the City Council relating to Article 15, Gender, including a discussion of whether the entire Charter could be amended with one ballot question to make it gender neutral, and repeal Article 15.**

ITEM 8 WAS CONTINUED TO THE JANUARY 25, 2010 MEETING.

- 9. Discussion and review of Task Force recommendations to date to determine whether additional additions, changes, or deletions are desired.**

ITEM 9 WAS CONTINUED TO THE JANUARY 25, 2010 MEETING.

10. Review, discuss, and possibly amend draft agenda for January 25, 2010 meeting

At the next meeting on January 25, 2010, the Task Force will continue discussion of Item 3, and begin discussion on Items 5 through 9.

Adjournment

With no further business to discuss, the meeting adjourned at 8:33 p.m.

Respectfully submitted,
A/V Tronics, Inc. DBA AVTranz.

Reviewed by
Brent Stockwell, Senior Advisor

Officially approved by the Charter Review Task Force on Monday, February 1, 2010.